Jurisdictional Statement

81-1505

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CASE NO. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1981

CAMELLIA CORPORATION,
Appellant,

vs.

DEBORAH CORNELL,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA AND/OR PETITION FOR WRIT OF CERTIORARI

JURISDICTIONAL STATEMENT - STATE CIVIL CASE

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QUESTIONS PRESENTED

1. Did the State safety glazing statute here involved set forth a reasonable guideline or standard for compliance therewith (such that landlord's repair or replacement in 1977, of one upper panel with glass of the same kind as remained in the other two upper panels of an otherwise all-wood door that had been in place since 1950 in rented premises, could subject landlord to a charge of and be upheld as negligence per se), or is the statute unconstitutionally vague such that the application of the statute by the Georgia Courts constituted State action in violation of the Fourteenth Amendment to the Constitution of the United States and deprived Appellant of property without due process of law?

2. Was the State statute here involved preempted by Federal law with regard to safety glazing material (and in particular the risk of injury arising out of the use of such material), such that the application by the Georgia Courts of the State law deprived Appellant of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States?

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DESIGNATION OF CORPORATE RELATIONSHIPS

The Camellia Corporation, filing this Jurisdictional Statement as Appellant in this proceeding, states that:

(a) This is its original Designation of Corporate Relationships.

(b) The Camellia Corporation, organized and heretofore operating as a business corporation under Georgia law, was dissolved on or about April 2, 1980; but for all purposes of this proceeding, its corporate existence survives and continues to exist as provided by applicable provisions of Georgia law, including Ga. Code Ann. Sections 22-1306, 22-1313(g) and 22-1325, and therefore:

(i) The Camellia Corporation is not owned by any parent corporation.

(ii) The Camellia Corporation does not have an ownership interest in any subsidiaries.

(iii) The Camellia Corporation does not have any affiliates.

Dated: February 8, 1982.

CERTIFICATE UNDER RULE 28.4(c)

Appellant certifies that the constitutionality of a statute of the State of Georgia affecting the public interest is drawn in question in this appeal, to-wit, Georgia Code Ann. Chap. 92A-20 (Ga. Laws 1970, pp. 151-153) and in particular Ga. Code Ann. §§92A-2001 and 92A-2004, and such fact will be certified to the Attorney General of the State of Georgia by service of this Jurisdictional Statement upon the Attorney General of the State of Georgia.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No.

CAMELLIA CORPORATION,
Appellant,

vs.

DEBORAH CORNELL,
Appellee.

JURISDICTIONAL STATEMENT -
STATE CIVIL CASE

APPEAL FROM THE SUPREME COURT OF GEORGIA
AND/OR PETITION FOR WRIT OF CERTIORARI

Appellant, CAMELLIA CORPORATION, appeals to the Supreme Court of the United States from the judgment of the Supreme Court of Georgia reversing a

judgment of the Court of Appeals of Georgia in favor of Appellant. In the event this Court does not find jurisdiction with respect to this Appeal, Appellant, in the alternative, moves this Court to consider the same as its Petition for Writ of Certiorari.

OPINIONS BELOW

The Opinion of the Supreme Court of Georgia of October 20, 1981 (Appendix, p. A1) and the Substitute Opinion, including the denial of Appellant's motion for rehearing of November 12, 1981 (Appendix, p. A9), are not yet reported. The Opinion of the Court of Appeals of Georgia (Appendix, p. A11) is reported at 157 Ga. App. 625, 278 S.E.2d 168 (1981). The verdict and judgment of the State Court of Muscogee County, Georgia (Appendix, p. A19), will not be

reported and is a part of the record below.

JURISDICTION

The judgment of the Court of Appeals of Georgia was entered February 23, 1981; certiorari to review that Opinion was granted by the Supreme Court of Georgia on April 29, 1981; the Opinion of the Supreme Court of Georgia was entered October 20, 1981; Appellant's motion for rehearing to the Supreme Court of Georgia was denied November 12, 1981, and the Opinion of the Supreme Court of Georgia was revised by Substitute, p. 4, by that Court on November 12, 1981. A stay of remittitur for 90 days from November 12, 1981, was granted by the Supreme Court of Georgia December 21, 1981, in order that an appeal or an application for certiorari may be filed in this Court. Notice of

appeal to this Court was timely filed on February 3, 1982.

Jurisdiction of this Court is invoked under 28 USCA, Section 1257(2) in connection with this Appeal and under 28 USC, Sections 1257(3) and 2103 in the event that Appeal is not applicable and the Writ of Certiorari is required. This action for damages for personal injury draws in question the validity of the Georgia safety glazing statute, Chapter 92A-20, Ga. Code Ann. (Ga. Laws 1970, pp. 151-153), and in particular Ga. Code Ann. §§92A-2001 and 2004, on the grounds that the application of the unconstitutionally vague State statute is repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States. The following decisions sustain the jurisdiction of the Supreme Court to review

the judgment on appeal in this case: Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 43 L.Ed.2d 328, 95 S.Ct. 1029 (1975); Sanks v. Georgia, 401 U.S. 144, 27 L.Ed.2d 741, 91 S.Ct. 593 (1971).

QUESTIONS PRESENTED

1. Did the State safety glazing statute here involved set forth a reasonable guideline or standard for compliance therewith (such that landlord's repair or replacement in 1977, of one upper panel with glass of the same kind as remained in the other two upper panels of an otherwise all-wood door that had been in place since 1950 in rented premises, could subject landlord to a charge of and be upheld as negligence per se), or is the statute unconstitutionally vague such that the application of the statute by the

Georgia Courts constituted State action in violation of the Fourteenth Amendment to the Constitution of the United States and deprived Appellant of property without due process of law?

2. Was the State statute here involved preempted by Federal law with regard to safety glazing material (and in particular the risk of injury arising out of the use of such material), such that the application by the Georgia Courts of the State law deprived Appellant of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States?

STATUTES INVOLVED

GA. CODE SECTION 92A-2001:

> "SEC. 92A-2001. DEFINITIONS.
> "(a) 'Safety glazing material' means any glazing material, such as tempered glass, laminated glass, wire glass or rigid plastic, which

meets the requirements of the USA Standard Z-97.1-1966 or such requirements as are or may be hereafter adopted by the Georgia State Department of Labor, and which are so constructed, treated or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material.

"(b) 'Hazardous locations' means those glazed structures in residential, commercial and public buildings known as sliding glass doors, entrance doors or adjacent fixed glazed panels, which may cover or be mistaken for means of ingress or egress, storm doors, shower doors, or tub enclosures whether or not the glazing in such doors, panels or enclosures are transparent and all doors, windows and mirrors on public buses and trains.

"(c) 'Installer' includes those persons or concerns who or which install glazing materials or build structures containing glazing materials, in hazardous locations."

"(d) 'Manufacturer' means a person who manufactures safety glazing material.

"(e) 'Fabricator' means a person who fabricates, assembles, or glazes from component parts such structures or products commonly known as sliding glass doors, entrance doors, adjacent fixed

glazed panels, storm doors, shower doors, bath tub enclosures, panels to be fixed glazed, entrance doors, or other structures to be glazed, to be used or installed in hazardous locations."
(Acts 1970, p. 151.)

GA. CODE SECTION 92A-2004:

"SEC. 92A-2004. UNLAWFUL NOT TO USE SAFETY GLAZING MATERIAL.

"It shall be unlawful, for use in the State of Georgia, to knowingly sell, fabricate, assemble, glaze, install or consent to be installed any product commonly known as a sliding glass door, entrance door, fixed glazed panel adjacent to an entrance door which may be mistaken for means of ingress or egress, storm door, shower door, tub enclosure or any other glazed structure for use in any hazardous locations, or any glazing material on any public bus or train, where said product or glazed structure contains any glass or glazing product other than safety glazing material."
(Acts 1970, pp. 151, 152.)

GA. CODE SECTION 92A-2005:

"SEC. 92A-2005. ENFORCEMENT OF CHAPTER BY COMMISSIONER OF LABOR.

The Commissioner of Labor shall administer and enforce the provisions of this Chapter. He shall have the power and authority to

adopt and promulgate such reasonable rules and regulations as shall be necessary in order that he might carry out the duties and responsibilities imposed upon him by this Chapter and in order that the purposes and intent of this Chapter shall be effectuated.
(Acts 1971, p. 901.)

GA. CODE SECTION 92A-9932:

"SEC. 92A-9932. PENALTY FOR VIOLATION OF CHAPTER 92A-20, RELATING TO STANDARDS FOR CERTAIN GLASS INSTALLATIONS.

"Whoever violates the provisions of Chapter 92A-20, relating to standards for certain glass installations, shall be guilty of a misdemeanor and punished accordingly."
(Acts 1970, pp. 151, 153.)

GA. CODE SECTION 61-111:

"SEC. 61-111. REPAIRS AND IMPROVEMENTS, DUTIES AS TO.

"The landlord must keep the premises in repair, and shall be liable for all substantial improvements placed upon them by his consent."
(Acts 1970, pp. 151, 153.)

GA. CODE SECTION 61-112:

"SEC. 61-112. LIABILITY OF LANDLORD FOR NEGLIGENCE OF TENANT AND FOR FAILURE TO REPAIR.

"The landlord, having fully parted with possession and right of possession, is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant; but he is responsible to others for damages arising from defective construction or for damages from failure to keep the premises in repair."

15 USCA SECTION 2075:

"SEC. 2075. STATE STANDARDS -- STATE COMPLIANCE TO FEDERAL STANDARDS.

"(a) Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the

requirements of the Federal standard.

"(b) Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this chapter if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this chapter.

"(c) Upon application of a State or political subdivision of a State, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) of this section (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this chapter if the State or political subdivision standard or regulation--

"(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this chapter, and

"(2) does not unduly burden interstate commerce. In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this chapter for such consumer product." As amended Pub.L. 94-284, §17(d), May 11, 1976, 90 Stat. 514.

16 C.F.R., SECTION 1201.1(d)(1)(i)(ii)(iii)

"SEC. 1201.1(d)(1)

"(i) Lacerations, contusions, abrasions, and other injury or death resulting from walking or running into glazed doors or

sliding glass doors believed to be opened or glazed panels mistaken as a means of ingress or egress, or pushing against glazing material in doors or glazed panels in an attempt to open a door.

"(ii) Lacerations, contusions, abrasions, and other injury or death resulting from accidentally falling into or through glazed doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures.

"(iii) Lacerations, contusions, abrasions, and other injury or death resulting from the act of installing, replacing, storing or otherwise manipulating glazing materials in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures, or from broken glazing material in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures...."

U.S. CONSTITUTION, AMENDMENT FOURTEEN

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

After trial by jury, judgment was rendered in favor of Deborah Cornell, hereinafter called Appellee, in the amount of $250,000.00 as damages for personal injuries received as a result of cuts and lacerations to her right arm. She received the cuts and lacerations after she opened the back door of her apartment, stepped outside, shook out a mop she had been using to clean up a spill on the floor, put the mop down and turned to go in and stuck her right arm through a glass panel, one of three panels in the top half of the wooden door.

The Georgia Court of Appeals, on appeal by the landlord, reversed this verdict and judgment. The Georgia

Supreme Court, by a four to three vote, granted Appellee a writ of certiorari and in a four to two decision reversed the Georgia Court of Appeals and affirmed the trial court verdict and judgment.

Appellee's complaint as first amended and as it existed as the trial commenced on January 30, 1980, alleged that the Appellant landlord was negligent in:

1. Installing a spring in the back door causing it to close in a manner presenting danger to a person having left the premises through the backdoor;

2. Installing and maintaining cheap and dangerous glass in the rear door of the premises;

3. The use and installation of the cheap glass in the rear door of the premises was negligence per se, because

it was not constructed of safety glazing material as required by Ga. Code §92A-2004; and

4. The use and installation of double-strength glass in the rear door was negligence per se, because the glass was not safety glazed in violation of Federal Law as required by the Consumer Products Safety Act, 15 U.S.C.A. §2051, et seq., and the regulations adopted pursuant to said Act, to-wit: 16 C.F.R., §1201, et seq. On the second day of trial, Appellee again amended her complaint and struck this allegation of negligence per se.

This is a landlord-tenant case. Appellee was a tenant, her husband having leased one apartment in Appellant's 650-unit apartment complex. Construction of the apartments was completed at least by 1950. These

tenants moved into the apartment in September, 1978. Prior to her accident on November 8, 1978, Appellee had occasion to go in and out the back door of the apartment approximately one or two times a day. There was no evidence in this record that any tenant had previously been injured in Appellant's apartment complex as a result of any defect in construction of any rear door of any apartment, or by reason of any glass panel in any such rear door. The rear door had three panels of glass in the top half, each separated by a visible strip of wood forming a very distinct, conspicuous demarcation. There was conflicting evidence, construed most favorably to Appellee, wherein the jury could have found that one of the three glass panels in the rear door through which Appellee stuck

her arm was replaced some time during the preceding tenancy of a tenant who lived in that apartment for about a year commencing March of 1977. The back door had a spring attached that caused the door to swing shut slowly, and when the door completely closed there was an audible click. Appellant had no knowledge that the spring was attached to this door until after the lawsuit was filed. There was no testimony from any prior tenant, including Appellee or her husband, that there had ever existed any problem as to this door or its function or operation, or that it was not operating properly at the time of the accident.

Appellee testified that she knew the back door would close on her, and in the past when she would step through she would block the door with her left foot

as she went through the door. But on the night of the accident she opened the door just far enough for her to get her body through, stepped outside, shook out her mop, put the mop down and turned to go in and stuck her right arm through a glass panel -- one of the three panel in the top half of the wooden door.

At the inception of the trial Appellant made a motion in limine as to any testimony relative to the Federal and State statutes referred to hereinabove, which was denied, raising, even before the commencement of trial, the unconstitutional vagueness of the Georgia statute and its preemption by the Federal statute. Appellant directly attacked the Georgia statute for failure to contain a reasonable standard therein such that the application would be a deprivation of Appellant's property

without due process of law and therefore an unconstitutional application. (See Appendix, pp.A25-A44). At the conclusion of Appellee's case, Appellant made a motion for directed verdict and the same was denied. After the conclusion of the evidence and before the charge to the jury, Appellant renewed its motion for directed verdict and the same was denied.

The trial court's charge is contained in the Transcript, pages 387(e) through 387(g). The trial court charged Ga. Code Ann. §§92A-2001(a)(b)(c) and 92A-2004. With reference to each such Code section the trial court preceded the charge of that Code section with the language "I charge you that there was in full force and effect from March 5, 1970, until November 8, 1978, a statute of the State of Georgia which ...".

Then, as to each Code section, the trial court stated, "defines the words 'safety glazing material' and then read the Code section; or, "defines the words 'hazardous locations' and then read the Code section; or, "defines the word 'installer' and read the Code section; or, with reference to §92A-2004, just read the Code section.

The only additional charge given by the trial court with reference to the Georgia statute was the following: "Plaintiff contends that the Defendant violated a certain Georgia law. Such violation is called negligence per se, or negligence as a matter of law. I will charge you the applicable parts of this law, and it is your duty to decide whether such violation took place..."

Objections were made throughout the trial by Appellant both as to the

applicability of the Georgia statute, its vagueness and the absence of any knowledge or of specific intent to violate the statute on the part of Appellant. For example, see the Transcript, pages 298-5 through 298-10, 298-15, 298-16, 298-18, 298-23.

Appellant filed a motion for judgment notwithstanding the verdict and/or a new trial together with amendment to motion for new trial, and the trial court entered its order denying such motion. Appellant appealed to the Georgia Court of Appeals, ennumerating as error the unconstitutionally vague application of the the State statute as being repugnant to the Fourteenth Amendment. See Appendix, pp. A45-A49. The three-judge Georgia Court of Appeals reversed the trial court without

specifically ruling on the constitutional question presented.

Appellee then filed for writ of certiorari to the Georgia Supreme Court, and that Court granted certiorari by a four to three vote. The Georgia Supreme by a four to two vote, reversed the judgment of the Georgia Court of Appeals. Appellant's Motion for Rehearing was denied and it appeals to this Court.

THE FEDERAL QUESTION IS SUBSTANTIAL

To apply the State statute as was done by the trial court and by the Georgia Supreme Court, when such statute does not set forth a reasonable guideline or standard for compliance therewith, particularly with reference to repair by a landlord in replacement of similar glass already in place, deprives Appellant of property without due

process of law in violation of the Constitution of Georgia, Article I, Section I, Paragraph I (Ga. Code Ann. §2-101), and constituted State action in violation of the Fourteenth Amendment to the Constitution of the United States. Moreover, the Georgia statute was superseded by Federal Law, to-wit, 15 U.S.C.A. §2051, et seq., and 16 C.F.R. 1201, et seq. As of this date, ten judges have considered the Georgia statute. The first, the trial court, was of the opinion that the State statute applied, charged the Trial Jury that the State statute applied and that a violation would constitute negligence per se, and overruled all of Appellant's motions and objections as to the unconstitutionally vague statute. Three judges of the Georgia Court of Appeals construed the statute such that it did

not apply under the facts of the case and no specific ruling was reached or made as to the constitutionality of the statute. Four Justices of the Georgia Supreme Court held the State statute applicable by construing the State statute contrary to the Georgia Court of Appeals, and, while not specifically ruling thereon, held that the enumerations of error of Appellant as to the unconstitutionally vague State statute were without merit. Two Justices of the Georgia Supreme Court dissented, without a written opinion, and one Justice did not participate in the decision.

Thus, of the ten State Court judges who have considered the Georgia statute, five (the Trial Judge, and four Justices of the Georgia Supreme Court) find the State statute applicable and constitutionally valid, and five Judges (three

Judges of the Georgia Court of Appeals and two Justices of the Georgia Supreme Court) do not find the Georgia statute applicable and construe the State statute contrary to the other five Judges.

There can be no doubt that the constitutional requirement of definiteness is violated by a criminal enactment that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The vice of this vagueness in criminal statutes is the treachery they conceal, either in determining what persons are included or what acts are prohibited. It matters not whether the violation of such statutes results in imprisonment or the taking of one's property, the legal effect of being constitutionally proscribed by the

Fourteenth Amendment to the Constitution of the United States remains the same.

A State Court judgment, adjudicating private lawsuits, may unconstitutionally abridge the due process clause of the Fourteenth Amendment. See Edwards v. Habib, 397 F.2d 687 (1968); New York Times Co. v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964); and Shelly v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

Moreover, a landlord has a property interest in his leased premises, subject to due process protections of the Fourteenth Amendment to the Constitution, particularly where an ambiguous State statute imposes criminal sanctions with regard to repair of such property, and, in turn, civil liability, for violation of such a statutory duty is negligence as a matter of law (or

negligence per se). See, e.g., Sanks v. Georgia, 401 U.S. 144, 91 S.Ct. 593, 27 L.Ed.2d 741 (1971), where probable jurisdiction was noted prior to dismissal, originally involving substantial questions of due process under the Fourteenth Amendment and in a landlord-tenant summary eviction; North Georgia Finishing v. Di-Chem, 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751 (1975), involving Georgia garnishment proceedings, where due process under the Fourteenth Amendment was invoked, this Court holding that any significant taking of property by the State is within the purview of the due process clause of the Fourteenth Amendment; a bank account is a form of property for purposes of such due process; and in applying the due process clause, different kinds of property are not

distinguished; and Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 43 L.Ed.2d 328, 95 S.Ct. 1029 (1975), where this Court held it had jurisdiction to review the judgment of the Georgia Supreme Court under 28 U.S.C. §1257(2), which gives the Court jurisdiction of an appeal from the final judgment of a State's highest court in a case where the constitutional validity of a State statute is drawn in question and held valid (since the constitutionality of a Georgia criminal statute had been "drawn in question" in a civil case and the Georgia Supreme Court upheld its validity in a "final" judgment).

It is well established that violation of a criminal statute which does not give adequate notice that the conduct charged is prohibited is violative of due process, and in numerous

instances this Court has adjudicated statutes to be unconstitutional for such vagueness. See Wright v. Georgia, 373 U.S. 284, 10 L.Ed.2d 349, 83 S.Ct. 1240 (1963); Bouie v. Columbia, 378 U.S. 347, 12 L.Ed.2d 894, 84 S.Ct. 1697 (1964); Baggett v. Bullitt, 377 U.S. 360, 12 L.Ed.2d 377, 84 S.Ct. 1316 (1964); Gooding v. Wilson, 405 U.S. 518, 31 L.Ed.2d 408, 92 S.Ct. 1103 (1972); Ashton v. Kentucky, 384 U.S. 195, 16 L.Ed.2d 469, 86 S.Ct. 1407 (1966); and Annotation, Indefiniteness of Penal Laws, 16 L.Ed.2d 1231, et seq.

The merits of Appellant's constitutional claims of due process violations are subject to review by this Court. Such review cannot be thwarted where proper assignments of error and insistence upon such constitutional claims were raised and insisted upon in both

the trial and appellate courts. This is so, even though such claims are not specifically ruled upon by those State Courts, other than by ruling that the claims had no merit. See Wright v. Georgia, supra.

Georgia follows the rule that violation of a statutory duty is negligence as a matter of law, otherwise called negligence per se, so that if it is the proximate cause of hurt or damage to another, and if that other is without contributory fault, the case is decided in his favor; and all that remains to be done is to assess the damages. If that other has himself been negligent, the jury applies the rule of comparative negligence to reduce or eliminate recovery. See Elk Cotton Mills v. Grant, 140 Ga. 727 (Case #2), 79 S.E. 836 (1913).

Appellant, at best under conflicting evidence, replaced a panel of glass in an old three-panel wooden door with the same glass that was originally in the door, and as continued to be in place in the other two panels of the door.

There can be no doubt that Ga. Code Ann. §92A-2004 does not deal with the replacement of a panel of glass as was involved in this case. Moreover, the law had to proscribe for new construction of doors in the future. It cannot be applied retroactively to the repair of an old door, such as here involved.

Just as the Georgia Court of Appeals held, the "hazardous locations" definition within the State Statute shows clearly that the glazed structures to which it applies must be a glass door, entrance door or adjacent fixed

glazed panels, which may cover or be mistaken for means of ingress or egress. One panel in a three-panel upper portion of a wooden door could not cover or be mistaken for a means of ingress or egress, particularly by one who had used the door daily. The State statute speaks only of the installation of glazed "products" such as doors--not component parts of glass panels thereof--and of any other "glazed structure," which, whether defined in accordance with the legal doctrine of ejusden generis or common-sense construction, cannot include a glass panel. To give the Act the construction given by the trial court and the Georgia Supreme Court would make criminal every landlord's or homeowner's replacement of a broken pane in these three-panel wooden doors with the same glass that is

already in place in the other two panels of the door.

Nor can this State statute engraft upon the landlord-tenant law any statutory duty giving a new and independent cause of action by a tenant against the landlord. Statutory duty of the landlord to the tenant is expressed in Ga. Code Ann. §61-111 and §61-112. As indicated in Childers v. Speer, 63 Ga. App. 848, 12 S.E.2d 439 (1940), the word "repair" in the Georgia statute contemplates an existing structure or thing which has become imperfect, and means to supply in the original existing structure that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, as near as may be--no more, no less. Giving the Appellee in the case at bar the benefit of the conflict that this one panel was

replaced sometime in 1977, the evidence is conclusive that if it was replaced by the landlord, it was replaced with similar glass and the door restored to the condition in which it originally existed.

Moreover, to constitute a violation of the statute, one would have to knowingly sell, fabricate, assemble, glaze, install or consent to be installed a fixed glazed panel adjacent to an entrance door which may be mistaken for means of ingress or egress, as provided by Ga. Code Ann. §92A-2004. See Morissette v. U.S., 342 U.S. 246, 96 L.Ed. 288, 72 S.Ct. 240 (1952). There is absolutely no evidence in this case that the Appellant knowingly violated the State statute, even were such statute to apply. The evidence is uncontradicted that Appellant did not

even know the statute existed, or know that it had any duties or obligations under the statute with respect to any tenant.

Throughout trial, objection was made by Appellant to the applicability by the court of the statute because of its unconstitutional vagueness and because of the absence of any specific intent revealed by any evidence that Appellant intended to violate the statute. There is no evidence rebutting Appellant's lack of knowledge at any point in time that the statute existed, and clearly there was no evidence to show any intent on the part of Appellant to violate that statute. The applicability of that statute by the lower court in this case was clear error, particularly in view of the instructions given by the lower court as to that

statute, wherein the jury was given no instructions as to the meaning of "knowingly" in the statute. The effect of applying the statute in the charge as given by the lower court was to impose strict liability upon the Appellant, for the jury was instructed that the statute did apply to the facts, and to find a violation of the statute all the jury had to do was determine that the glass used in replacement was replaced by Appellant and that the glass did not meet the standards of the State statute.

To apply the State statute as was done by the lower court and the Georgia Supreme Court, when such statute does not set forth a reasonable guideline or standard for compliance therewith, particularly with reference to "replacement of similar glass already in place," deprived Appellant of property without

due process of law in violation of the Constitution of Georgia, Article I, Section I, Paragraph I (Ga. Code Ann. §2-101), and constituted State action in violation of the Fourteenth Amendment to the Constitution of the United States.

Moreover, the Georgia statute was superseded by federal law, to-wit, 15 U.S.C.A. §2051, et seq., and 16 C.F.R. §1201, et seq. Part of the legislative history of that Act is indicated in U.S. Code Congressional and Administrative News, Volume 2, 94th Congress, Second Edition, 1976, pp. 1030, 1031.

While there is no doubt the Federal law has preempted the State statute, cases in the lower Federal Courts give no clear indication of whether or not repair of doors already in place prior to enactment of the Federal law requires use of safety glazing materials. Such

cases indicate that installation of a door containing panels of glass could be covered as to manufacturers, but that the Federal law would not apply to individuals or concerns subsequently undertaking to repair or replace such panels. This Court's guidance in this most important and timely area is now necessary, and we foresee that a decision will not be long delayed, whether in this case specifically presenting the question or in some other case. For lower Federal Court cases dealing with the Federal statute, see State Fair of Texas v. U.S. Consumer, etc., 481 F.Supp. 1070 (1979), aff'd. in part, vacated in part and rev'd. in part, 650 F.2d 1324 (5 Cir., 1981); Robert K. Bell Enterprises v. Consumer Product, 645 F.2d 26 (10 Cir., 1981); and ASG Indust. v. Consumer Product Safety Com'n., 593

F.2d 1323 (D.C. Cir., 1979). Thus in State Fair, supra, the District Court reasoned that Congress could not have intended that any person who performs routine repairs or maintenance on a product has thereby "manufactured" the product, e.g., television repairman replacing a tube, an electrician replacing a worn wire in a lamp or a parent replacing the chain on his child's bicycle. Thus State Fair did not "assemble" (as such term is included in the Federal statute in its definition of "manufacturing"), the District Court reasoning that Congress in defining "manufacturing" to include "to assemble" intended to embrace the situation where a factory receives component parts manufactured elsewhere and constructs ("assembles") consumer products on its premises from these component parts.

Yet, the Court of Appeals for the Fifth Circuit reversed in part, holding the Skyride to be a consumer product necessarily "assembled" at the site of the fair. Query: When will a definitive interpretation of the Federal statute take place, such that preemption or no preemption can be known, especially in the area of repair and maintenance, of great national significance to the average small American businessman and/or homeowner, such as the landlord and the tenant in the case at bar? Query: What reasonable guideline or standard for compliance therewith is there in the Federal statute and regulations? Query: Is not the lack of any reasonable guideline or standard of care in the Georgia statute, without any rules and regulations having been adopted, even more apparent, rendering

the Georgia statute clearly unconstitutionally vague?

Thus, without Georgia having secured an exemption from the Federal preemptive statute, and in particular because Georgia has adopted no rules or regulations as required by Ga. Code §92A-2005, nor implemented Ga. Code §92A-2001 by updating the requirements of the U.S.A. Standard as has been done in the Federal statute and regulations adopted pursuant thereto, it is evident that Georgia law has been preempted in this field.

As indicated in the legislative history, the key factor is whether the State or local requirement respecting a product is designed to deal with the same risk of injury associated with the product as the federal requirement. If the same risk of injury is associated

with the use of the product, then the federal requirement preempts a different State or local requirement. As indicated in 16 C.F.R., §1201.1(d)(1)(i)(ii)(iii), the risks of injury are the same.

The ambiguity of the Georgia statute has been thus graphically illustrated by the fact that the three-judge panel of the Court of Appeals of Georgia held that the trial court committed error in applying the statute; and that the statute could not apply because of the Court of Appeals' construction and interpretation of the definition of "hazardous location". Such construction was agreed thereto by two Justices of the Georgia Supreme Court, since they dissented. That being true, how can it ever be said that the Appellant, through the manager of its

apartments, if in fact responsible for the replacement of one of three existing glass panels in the door in question with double-strength glass (which, of course, has been denied but assumed for the purposes of this argument), could have known that it was in violation of the law. Apparently five Judges of the highest appellate courts of this State would not have so known. The constitutionality of such a statute cannot be upheld if even one person should be subjected to the deprivation of his property or the possibility of imposition of criminal sanctions for the violation of the statute which is not clear under any reasonable construction. The deprivation of property, just as the deprivation of liberty, is protected by the Fourteenth Amendment. The Georgia statute is unconstitutionally vague and

its application by the Georgia State Courts in this case deprived Appellant of property without due process of law.

Moreover, it is apparent that both the Federal and State laws sought to meet the same risk, i.e., lacerations and other injuries resulting from walking or running into glazed doors, from accidently falling into or through glazed doors, and from installing glazing materials in doors. This being true, then the Federal law controls the entire subject regardless of whether it covers less than all of or the same activities addressed by the State law. Therefore, if the Georgia statute were held to be constitutional, then a fortiori, a Federal law covers the same risk of injury, preempts the State law and, as well, spells out procedures to be followed for the State law to remain

viable there being no evidence that such procedures were followed in Georgia.

CONCLUSION

Appellant respectfully calls attention to the far reaching effects of this State Court decision. It will unjustifiably affect every landlord and homeowner in the State of Georgia, when no reasonably clear standard was available to guide them as to repairs made in years past, subjecting them to liability in the years to come.

Here only one of three panes of glass in an otherwise wooden rear door, rather than all of the glass, was, considering the evidence most favorably to Appellee, replaced. The door was not replaced. The other two panes consisting of the same material remained in place and there would be no negligence per se liability upon Appellant had one

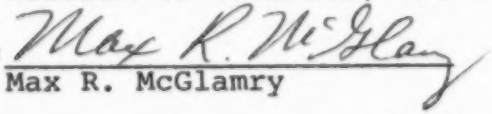
of those panes been involved. The Georgia statute is patently unconstitutional and not pertinent to any act of Appellant in this action. Appellant has steadfastly relied upon its constitutional rights and has repeatedly urged the unconstitutionality of the Georgia statute in question and objected to unconstitutional application in this case. Hopefully at this point in our judicial system, Appellant will reach receptive minds. Otherwise, Appellant has been effectively fined a quarter of a million dollars for a repair that it has denied making; that if it did make the repair, it was not known, nor could it be reasonably contemplated to be known to be in violation of law when made; and which would not have been known to be in violation of law by

five Judges of the highest Appellate courts of this State.

Appellant respectfully urges that the decision of the Georgia Supreme Court be reversed.

PAGE, SCRANTOM, HARRIS,
McGLAMRY & CHAPMAN, P.C.

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By: 
Max R. McGlamry

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Columbus, Georgia 31994
(404) 324-0251

CERTIFICATE OF SERVICE ON APPELLEE

I do hereby certify that I am a member of the Bar of The Supreme Court of the United States and that I have served the foregoing Jurisdictional Statement upon Deborah Cornell, Appellee, by mailing copies of the same properly addressed, postage prepaid, to Mr. Billy E. Moore, Law Offices of Billy E. Moore, attorneys of record for Appellee Deborah Cornell.

This 9th day of February, 1982.

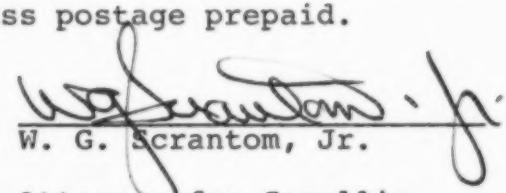
W. G. Scrantom, Jr.

Attorney for Camellia Corporation, Appellant

P.O. Box 1199
Columbus, GA 31994
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CERTIFICATE OF SERVICE ON ATTORNEY GENERAL OF THE STATE OF GEORGIA

I, W. G. Scrantom, Jr., one of the attorneys for Camellia Corporation, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 9th day of February, 1982, I served the foregoing Jurisdictional Statement upon the Attorney General of the State of Georgia by mailing a copy thereof to The Honorable Michael Bowers, Attorney General, State of Georgia, 132 State Judicial Building, Atlanta, Georgia, 30334, in a properly addressed envelope, with first-class postage prepaid.



W. G. Scrantom, Jr.

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Appendix

In the Supreme Court of Georgia

Decided: October 20, 1981

37439. DEBORAH CORNELL

v.

CAMELLIA CORPORATION.

CLARKE, Justice.

We granted certiorari to consider the Court of Appeals' holding that glass installed in the upper portion of a door, the lower portion of which is wooden, is not required to be safety glazed materials under Ga. Code Ann. Chapter 92A-20. Camellia Corporation v. Cornell, 156 Ga. App. 625 (___ SE2d ___) (1981). We reverse.

Cornell, a tenant in an apartment building owned by Camellia Corporation, was injured when her arm when through a glass panel in the back door of her apartment. The door is wooden framed;

the lower section is wood paneled and the top section is constructed with three glass panels. Each glass panel is approximately 13" x 24". There was evidence that the glass in this particular door was replaced in the summer of 1977 with a double-strength window glass. The testimony showed that this particular glass shatters upon impact and is not in the category of safety glasses or safety glazing materials.

1. In 1970, the legislature enacted Code Ann. §95A-2001, et seq., to "prohibit the use, sale, fabrication, assembly, glazing, installation of products commonly known as sliding glass doors, entrance doors, fixed glazed panels, storm doors, shower doors, tub enclosures or other glazed structures for use in hazardous locations, or on any public bus or train unless they

contain safety glazing material." Ga. L. 1970, p. 151. The door in question is an "entrance door" and does not contain "safety glazing material." The issue is whether it is a prohibited glazed structure in a hazardous location as defined by the statute.

The trial court charged the jury that it could find negligence per se if the defendant had violated Code Ann. §95A-2004 in replacing the glass in the door in 1977. Section 95A-2004 provides:

> "It shall be unlawful, for use in the State of Georgia, to knowingly sell, fabricate, assemble, glaze, install or consent to be installed any product commonly known as a sliding glass door, entrance door, fixed glazed panel adjacent to an entrance door which may be mistaken for means of ingress or egress, storm door, shower door, tub enclosure or any other glazed structure for use in any hazardous locations, or any glazing material on any public bus or train, where said product,

> glazing material or glazed structure contains any glass or glazing product other than safety glazing material."

The Court of Appeals reversed, holding the statute applied only to those "glazed structures" which may be mistaken for an entrance or exit. We cannot read such a limitation into the statute. Although the statute contains a reference to areas "which may be mistaken for a means of ingress and egress," this reference modifies fixed glazed panels adjacent to an entrance door. It does not modify the phrase "entrance door." Indeed, it could not. It is not possible for anyone to mistake an entrance door for a means of ingress and egress because such a perception would be accurate and not a mistake. The statutory definition of "hazardous locations" deals with "those glazed structures in residential, commercial

and public buildings known as sliding glass doors, entrance doors, or adjacent fixed glass panels, which may cover or be mistaken for means of ingress or egress, storm doors, shower doors, or tub enclosures whether or not the glazing in such doors, panels, or enclosures are transparent...." Code Ann. §95A-2001(b). It is the opinion of this court that the clear meaning of the statute is to require safety glazing material when installing glass panels in an entrance door, as well as when installing sliding glass doors and glass panels, since entrance doors are in and of themselves a "hazardous location."

2. Camellia Corporation further argues that Code Ann. §95A-2004 cannot apply on the ground that 15 USCA §2051, et seq., regulating Consumer Product Safety and the rules on safety glass

standards set forth in 16 C.F.R. 1201, et seq., have preempted the field of safety glass standards. The Consumer Product Safety Act regulates the manufacturing, selling, distribution and importation of consumer products. It does not encompass installation which is the basis of this action. The regulations on safety glass in 15 C.F.R. 1201, et seq., became effective July 6, 1977, see 15 C.F.R. 1201.7, and there was no showing that the regulations were effective and applicable at the time the glass pane in the door was replaced. Furthermore, on examining the regulations we find they do not conflict with the Georgia statute in this case. The regulations require safety glazing materials of some type to be used in doors. 16 C.F.R. 1201.1(a). It is undisputed that no safety glazing

material was used in the back door of Mrs. Cornell's apartment.

3. Finally, the defendant contends that he did not knowingly violate the standard and knowledge is required by Code Ann. §92A-2004. This law was adopted in 1970 in Georgia. Ga. L. 1970, p. 151. "Laws, after promulgation, are obligatory upon all inhabitants of this state, and ignorance of the law excuses no one." Code Ann. §102-105. The fact that they did not know that the law required safety glazing material in such doors would not relieve them of this statutory duty.

4. The defendants also complain that the trial court committed reversible error in failing to charge proximate cause as it relates to negligence per se. We find no merit to this contention. There was no objection to the

charge on this point at trial. Furthermore, the court in its general charge instructed the jury that they must find that the negligence of the defendant was the proximate cause of the injury to the plaintiff.

Since we hold the trial court did not err in charging the provisions of §92A-2001, et seq., in this case, the judgment of the Court of Appeals is reversed and the jury verdict in favor of the plaintiff is upheld.

Judgment reversed. All the Justices concur, except Jordan, C. J. and Marshall, J. dissent. Weltner, J. not participating.

37439. DEBORAH CORNELL v.
CAMELLIA CORPORATION

Please substitute the attached page 4 in the original opinion.

The Motion for a Rehearing was Denied Today.

November 12, 1981

All the Justices concur, except Jordan, C. J., and Marshall, J., dissent. Weltner, J., not participating.

must find that the negligence of the defendant was the proximate cause of the injury to the plaintiff.

5. We have also examined the remaining enumerations of error not addressed by the Court of Appeals because of that court's reversal on the issue of negligence per se and find them to be without merit.

The judgment of the Court of Appeals is reversed and the jury verdict in favor of the plaintiff is upheld.

Judgment reversed. All the Justices concur, except Jordan, C. J., and Marshall, J., who dissent; Weltner, J., not participating.

February 23, 1981

23-181,182

60646, 60647. CAMELLIA CORPORATION v. CORNELL (and vice versa).

SOGNIER, Judge.

Appellee, Deborah Cornell, brought this action against her landlord, appellant Camellia Corporation, seeking damages for injuries caused by appellant's alleged negligence. Appellee alleged (1) common law negligence in the installation of cheap and dangerous glass in a door which closed by means of a coil spring; and (2) negligence per se in failing to install safety glazing material in accordance with Ga. Code Ann. §92A-2004.

Appellee opened the back door to her apartment in order to replace a mop which she had just used in her

apartment. While shaking the mop and replacing it, she braced the door open with her body. As appellee turned to go back into her apartment, the door closed suddenly, apparently as a result of the pull of the spring. Appellee extended her right arm to catch the door and it went through the glass pane in the door, shattering the pane and injuring her arm. The jury returned a verdict in her favor and Camellia Corporation appeals, contending that the court erred in certain charges and by not granting its motion for a directed verdict.

1. Appellant contends that the trial court erred in charging Code Ann. §92A-2004. Code Ann. §92A-2001(b) provides:

"(b) 'Hazardous locations' means those glazed structures in residential, commercial and public buildings known as

sliding glass doors, entrance doors or adjacent fixed glazed panels, which may cover or be mistaken for means of ingress or egress, storm doors, shower doors, or tub enclosures whether or not the glazing in such doors, panels or enclosures are transparent and all doors, windows and mirrors on public buses and trains."

Code Ann. §92A-2004 provides: "It shall be unlawful, for use in the State of Georgia, to knowingly sell, fabricate, assemble, glaze, install or consent to be installed any product commonly known as a sliding glass door, entrance door, fixed glazed panel adjacent to an entrance door which may be mistaken for means of ingress or egress, storm door, shower door, tub enclosure or any other glazed structure for use in any hazardous locations, or

any glazing material on any public bus or train, where said product, glazing material or glazed structure contains any glass or glazing product other than safety glazing material."

The door in question was wooden, with the lower portion (approximately three-sevenths of the total door) paneled in wood. The upper portion of the door (four-sevenths) consisted of three glass panels of equal size, each separated by wooden framing. We do not consider such a door a "glazed structure" as described in the statute so as to constitute a hazardous location, or to require special safety glazing material under the provisions of Code Ann. §92A-2004. Although the door in question may be considered an "entrance door," a close reading of the statute leads us to the conclusion that the type

of "glazed structure" envisioned by the legislature is one that is entirely or almost entirely constructed of glass and which a person may mistake for an unenclosed entrance or exit. Thus, charging the jury on the provisions of this section was unauthorized and prejudicial, and appellant's motion for a new trial should have been granted.

2. In considering the denial of appellant's motion for a directed verdict, we turn to the other allegations of negligence contained in her petition. Appellee alleged that the spring in the door was defective. The spring was installed by a prior tenant and was not maintained by the landlord, but was allowed to remain in place at the option of the tenant. Appellee was familiar with the spring on the door, had used it for several months and was

not aware of any defect in the spring. The landlord, likewise, had no notice of any defect in the spring. Appellee also contends that the use of glass other than safety glazing material in her back door constituted negligence by appellant.

Neither maintenance of the coil spring, nor use of the non-safety glass, standing alone, would be sufficient to show negligence on the part of appellant. However, the combination of both the coil spring and the glass in the door may be sufficient to show that by the exercise of ordinary care appellant would know, or should have known, that such a combination would present a danger to appellee. See Moody v. Southland Investment Corp., 126 Ga. App. 225, 234 (190 SE2d 578) (1972). The evidence showed that appellant, as

landlord, had superior knowledge of the type of glass in the door and the potential for danger because of the spring attached to the door. We conclude that under the circumstances of this case, the jury might properly have found that the door contained a latent defect of which appellee had no notice, and about which the landlord knew or should have known. McGee v. Hardacre, 27 Ga. App. 106 (1) (107 SE 563) (1921); Wilson v. Elijah A. Brown Co., 62 Ga. App. 898, 900 (10 SE2d 219) (1940); rev'd on other grounds, Elijah A. Brown Co. v. Wilson, 191 Ga. 750 (13 SE2d 779) (1941); Country Club Apartments v. Scott, 154 Ga. App. 217, 219 (267 SE2d 811) (1980). Thus, it was not error for the trial court to deny appellant's motion for a directed verdict.

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3. In view of our decision in Division 1, it is not necessary to discuss appellant's other enumerations of error.

4. Cornell filed a cross-appeal from the trial court's denial of her motion to amend the judgment to reflect the increased interest rate on judgments which took effect on July 1, 1980. Code Ann. §57-108. Because this case must be returned to the trial court for a new trial, it is not necessary to decide this issue.

Judgment reversed in Case No. 60646. Judgment affirmed in Case No. 60647. Deen, P. J., and Birdsong, J., concur.

IN THE STATE COURT OF MUSCOGEE COUNTY

STATE OF GEORGIA

DEBORAH CORNELL,	*	CIVIL ACTION
Plaintiff,	*	NO. 7565
vs.	*	
CAMELLIA CORPORATION,	*	DAMAGES
Defendant.	*	

JUDGMENT

This action came on for trial before the court and a jury, Honorable Rufe E. McCombs, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It Is Ordered and Adjudged

That the Plaintiff Deborah Cornell recover of the Defendant Camellia Corporation the sum of Two Hundred and Fifty Thousand Dollars ($250,000.00), with interest thereon at the rate of

seven percent (7%) as provided by law, and her costs of action.

Dated at Columus, Georgia, this 4th day of February, 1980.

s/Rufe E. McCombs
JUDGE, STATE COURT

D. L. Breault

charge on this point at trial. Furthermore, the court in its general charge instructed the jury that they must find that the negligence of the defendant was the proximate cause of the injury to the plaintiff.

Since we hold the trial court did not err in charging the provisions of §92A-2001, et seq., in this case, the judgment of the Court of Appeals is reversed and the jury verdict in favor of the plaintiff is upheld.

Judgment reversed. All the Justices concur, except Jordan, C. J. and Marshall, J. dissent. Weltner, J. not participating.

37439. DEBORAH CORNELL v.
CAMELLIA CORPORATION

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November 12, 1981

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must find that the negligence of the defendant was the proximate cause of the injury to the plaintiff.

5. We have also examined the remaining enumerations of error not addressed by the Court of Appeals because of that court's reversal on the issue of negligence per se and find them to be without merit.

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Judgment reversed. All the Justices concur, except Jordan, C. J., and Marshall, J., who dissent; Weltner, J., not participating.

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The door in question was wooden, with the lower portion (approximately three-sevenths of the total door) paneled in wood. The upper portion of the door (four-sevenths) consisted of three glass panels of equal size, each separated by wooden framing. We do not consider such a door a "glazed structure" as described in the statute so as to constitute a hazardous location, or to require special safety glazing material under the provisions of Code Ann. §92A-2004. Although the door in question may be considered an "entrance door," a close reading of the statute leads us to the conclusion that the type

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not aware of any defect in the spring. The landlord, likewise, had no notice of any defect in the spring. Appellee also contends that the use of glass other than safety glazing material in her back door constituted negligence by appellant.

Neither maintenance of the coil spring, nor use of the non-safety glass, standing alone, would be sufficient to show negligence on the part of appellant. However, the combination of both the coil spring and the glass in the door may be sufficient to show that by the exercise of ordinary care appellant would know, or should have known, that such a combination would present a danger to appellee. See Moody v. Southland Investment Corp., 126 Ga. App. 225, 234 (190 SE2d 578) (1972). The evidence showed that appellant, as

landlord, had superior knowledge of the type of glass in the door and the potential for danger because of the spring attached to the door. We conclude that under the circumstances of this case, the jury might properly have found that the door contained a latent defect of which appellee had no notice, and about which the landlord knew or should have known. McGee v. Hardacre, 27 Ga. App. 106 (1) (107 SE 563) (1921); Wilson v. Elijah A. Brown Co., 62 Ga. App. 898, 900 (10 SE2d 219) (1940); rev'd on other grounds, Elijah A. Brown Co. v. Wilson, 191 Ga. 750 (13 SE2d 779) (1941); Country Club Apartments v. Scott, 154 Ga. App. 217, 219 (267 SE2d 811) (1980). Thus, it was not error for the trial court to deny appellant's motion for a directed verdict.

3. In view of our decision in Division 1, it is not necessary to discuss appellant's other enumerations of error.

4. Cornell filed a cross-appeal from the trial court's denial of her motion to amend the judgment to reflect the increased interest rate on judgments which took effect on July 1, 1980. Code Ann. §57-108. Because this case must be returned to the trial court for a new trial, it is not necessary to decide this issue.

Judgment reversed in Case No. 60646. Judgment affirmed in Case No. 60647. Deen, P. J., and Birdsong, J., concur.

IN THE STATE COURT OF MUSCOGEE COUNTY

STATE OF GEORGIA

DEBORAH CORNELL,	*	CIVIL ACTION
Plaintiff,	*	NO. 7565
vs.	*	
CAMELLIA CORPORATION,	*	DAMAGES
Defendant.	*	

JUDGMENT

This action came on for trial before the court and a jury, Honorable Rufe E. McCombs, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It Is Ordered and Adjudged

That the Plaintiff Deborah Cornell recover of the Defendant Camellia Corporation the sum of Two Hundred and Fifty Thousand Dollars ($250,000.00), with interest thereon at the rate of

seven percent (7%) as provided by law, and her costs of action.

Dated at Columus, Georgia, this 4th day of February, 1980.

s/Rufe E. McCombs
JUDGE, STATE COURT

D. L. Breault

IN THE SUPREME COURT OF GEORGIA

CAMELLIA CORPORATION, * CASE NO. 37439

Appellant, *

vs. *

DEBORAH CORNELL, *

Appellee. *

NOTICE OF APPEAL

Notice is hereby given that Camellia Corporation, Appellant in the above-stated case, hereby appeals to the Supreme Court of the United States from the judgment of the Supreme Court of Georgia, as revised and entered November 12, 1981, and in which Appellant's motion for rehearing was denied by the Supreme Court of Georgia on November 12, 1981. In the event that appeal is not applicable and writ of certiorari is required, then this Notice shall form a part of Camellia Corporation's petition for the writ of certiorari to the

Supreme Court of the United States to review the said judgment of the Supreme Court of Georgia.

The judgment of the Supreme Court of Georgia was a final judgment reversing the judgment of the Georgia Court of Appeals and upholding a jury verdict and judgment in favor of Deborah Cornell ordering and adjudging that Deborah Cornell recover of Camellia Corporation the sum of Two Hundred Fifty Thousand Dollars and No/100 ($250,000.00) with interest thereon at the rate of seven percent (7%) and her costs of the action.

The Clerk of the Supreme Court of Georgia, which Court is possessed of the record, will omit nothing from the record on appeal in that Court, including the transcript of evidence and proceedings filed for inclusion in the

record on appeal, and said Clerk of the Supreme Court of Georgia is requested to certify said record and provide for its transmission to and filing with the Clerk of the Supreme Court of the United States.

The Supreme Court of the United States has jurisdiction over this appeal under 28 U.S.C.A., §1257(2) and under 28 U.S.C.A., §§1257(3) and 2103 in the event that appeal is not applicable and the writ of certiorari is required.

Dated: February 3, 1982.

PAGE, SCRANTOM, HARRIS,
McGLAMRY, CHAPMAN, P.C.

By: s/W. G. Scrantom,Jr.
W. G. Scrantom, Jr.

By: s/ Max R. McGlamry
Max R. McGlamry

1043 Third Avenue
P. O. Box 1199
Columbus, GA 31994
(404) 324-0251

ATTORNEYS FOR
CAMELLIA CORPORATION, APPELLANT

CERTIFICATE OF SERVICE

I certify that I am of Counsel for Camellia Corporation, Appellant, and that I have served a copy of the within and foregoing Notice of Appeal and/or Petition for Writ of Certiorari by mailing a copy of the same properly addressed, postage prepaid to Law Offices of Billy E. Moore, attorneys of record for Deborah Cornell, Appellee.

This 3rd day of February, 1982.

s/ W. G. Scrantom, Jr.
Of Counsel for Camellia
Corporation, Appellant

FROM TRANSCRIPT OF TRIAL PROCEEDINGS

PAGES 6-10

MR. MARCHETTI: Your Honor, we addressed the Court yesterday with a letter pertaining to two particular statutes, one a Georgia statute and one a federal statute, which I assume the Court has read.

THE COURT: Yes, sir.

MR. MARCHETTI: The purpose of that was to allow the Court an opportunity to become familiar with two sections which are not necessarily frequently cited to the Court and to have an opportunity to review the federal statute, the Consumer Safety Products Act, as well as the CFR this Court does not have ready access to. We provided the Court at that particular time with complete copies of the Code of Federal Regulations as they pertain to

Section 1200, part 1200, as they pertain to the safety glazing standards. These two particular statutes have been cited at one time or another by the plaintiff in either the plaintiff's complaint or the plaintiff's amended -- plaintiff's complaint as amended. We expect that, therefore, these two statutes and these two statutes only would be those which may be commented upon, either in the earlier part of the trial in an opening statement, during the course of the trial from witnesses, perhaps.

Now, the two particular statutes -- and I don't wish to necessarily go over everything that's been stated in the letter.

THE COURT: Yes, sir.

MR. MARCHETTI: The first statute is the Georgia act, which begins at Chapter 92A-20 of the Georgia Code.

It was passed in 1970. I've already recited certain facts which we think the evidence will show in this case; and the purpose of that was to allow the Court to know that it was the position of the defendant that the defendant would be irreparably harmed in this particular case unless a proper foundation were laid initially before any such mention of the statutes is made. We think that a proper foundation is impossible under the undisputed facts that we expect the evidence will produce as it will be produced here.

The first act is the Safety Glazing Act, as how it is known in Georgia, at 92A, which I just mentioned. It deals with hazardous locations, and I've already quoted the act to the Court, specifically 92A-2001 sub B, and advised the Court in my letter that the

only portion thereof which is relevant here is the definition of hazardous location, where it means under the terms of the act, "those glazed structures in residential, commercial, and public buildings known as sliding glass door, entrance doors, or adjacent fixed panels which may cover or be mistaken for means of ingress or egress." Another provision of that act, 92A-2004 states that it shall be unlawful for use in the State of Georgia to knowingly sell or fabricate or assemble glazed -- install or set to be installed any product commonly known as a sliding glass door, entrance door, fixed glazed panel adjacent to an entrance door which may be mistaken for means of ingress or egress." Two important provisions of that last code section are necessary to be noted at this time. First, the term

"knowingly" must be shown before that could be relevant at all to these proceedings, that the defendant knowingly installed or consented to be installed any such product; but also, Your Honor, the entrance door, if it be found to be an entrance door, must be mistaken for means of ingress or egress.

THE COURT: Which may cover or be mistaken.

MR. MARCHETTI: Which may cover or be mistaken for means of ingress or egress. The fact, the undisputed fact we think the evidence will show in this case is that the plaintiff in this case was residing in an apartment which had been leased to her and her husband approximately two months before the incident in issue. The door with which we deal was a rear door to their apartment. She was -- she

had exited the door when the door closed and her arm came in contact with a glass pane that was located in the door. I don't think that there will be a dispute as to whether or not plaintiff -- that a glass covered the means of ingress or egress like a glass panel over a hole or over an opening, a common opening; and we don't -- it was known to the plaintiff that that was the door to go out. It was the rear door to her apartment. She had exited just before the incident occurred. A review of the only case that ever cited this particular code provision is Moody v. Southland Investment Company, which I've cited to the Court. In that case the Georgia Court of Appeals cited this act. It noted first, though, that it didn't apply because the incident occurred prior to the effective date of the act, but in

the initial part of the opinion of Moody v. Southland Investment Company, the Court spoke of the type of risk which this particular legislation was supposed to address, and what it referred to then was the optical-illusion type of situation, where not knowing that there was a glass panel there, the party walked into that glass and sustained injury. That is not the case that is presented to the Court at hand. This was a glass pane, we believe the evidence will show, inside a wood door. It was not covered -- there was no glass covering over a hole or an exit or a hallway. The entire door was not glass. The Moody v. Southland Investment Company case is at 126 Georgia Appeals 225. In each of the cases in Georgia dealt with these glass type of cases. All of them have dealt with the optical illusion type of

situation. That case that I just cited to you was the only case -- and that was enacted in 1970, the Georgia statute, that has even referred to this particular Georgia statute as being, you know, at all or interpreted; and it's interpreted in that particular factual situation to be the legislation that was meant to effect [sic]. It is to be noted that in another case the only case that I found in Georgia that was a glass case, that is, dealt with it, and that case came out after, incidentally, the Moody v. Southland Investment Company case. It was the PPG Industries v. Jensen at 135 Georgia Appeals 248. That is the only Georgia case that I found where the issue of an optical illusion was not involved. It was a case in 19-- it was decided in 1975 before the Georgia Court of Appeals. It's

interesting to note that while that Georgia act had been in effect for some time before that and while the same court of appeals found it interesting to mention it in an earlier case, when it came upon a glass panel located in the Varsity Drive-in in Atlanta, where the plaintiff had not mistaken it in an optical illusion situation, but falling against a glass panel over a bridge over a road and went through it, that the Court didn't even cite that act where it had a number of years earlier. Didn't even cite it; didn't even cite it as a safety-glazing type tying. Here's a glass panel. It didn't even cite this particular act. It wasn't involved in the case at all. Yet that is a situation -- the only Georgia case that I've found that didn't have any optical illusion type situation where the

plaintiff didn't think that was a hole or a door or something like that and accidently walk into the glass.

Your Honor, the act did at Section 2005 provide that the Department of Labor shall administer and enforce the provisions in the chapter. They might issue rule and regulations. It's been my experience in reviewing this and other legislation having to do with these matters that issuance of regulations usually helps in the interpretation of these particular acts. I will stand in my place and advise the Court that I have checked in our library and I've checked with the Department of Labor and found that no rules or regulations interpreting this particular act or enforcing it were ever issued by the Department of Labor. In that context there's no reasonable standard placed in

the act or in rules and regulations that might be issued thereafter; and in effect, it would be a deprivation of property without due process and therefore it would be unconstitutional application here.

In the cases dealing with the federal act, Your Honor, the Consumer Safety Product Act was enacted in the early 1970's, 1972, by the federal legislation. The Consumer Safety Products Act itself does not set out specific standards with regard to various types of products. These involve swimming pool slides and glass and other things that were subsequently issued by the Commission. But the provisions of that particular act, specifically 16 USC 2058 state that they are applicable to consumer products manufactured after the effective date of

the standard, that might be issued thereafter. The standard would be effective 30 days after promulgation. That is located at 16 USC 2058 -- excuse me, 15 USE 2058, both of those particular citations.

The standard in this particular matter that was given to the Court, a part of the Code of Federal Regulations, on its face has an effective date of July 6, 1977. Section 1201.1 of those Code of Federal Regulations provides that it applies to architectural products produced or distributed after the effective date of the enactment of these standards. The same section states it applies only to glazing materials manufactured after the effective date of the standard. The same section states separately it applies only to architectural products,

such as a door, manufactured after the effective date of the standard. It refers at point 1201.6 to the stock-piling of glazing materials in between the date of the issuance of the standard in about June of 1977 and the effective date of the standard on July 6, 1977. Therefore, Your Honor, to be applicable at all, even to the product with which we're dealing, it must be shown that the glazing material in the door on the date of the incident was manufactured prior to -- subsequent to July 6, 1977.

We believe that the evidence will show that this particular door was part of the initial building. The building of the Camellia Apartments and that particular door was in 1949 and 1950, well before this particular incident.

With that, Your Honor, we believe that the defendant here is not a manufacturer, fabricator of the door; that unless -- that the effective date of the act of the federal standard being July 6, 1977, not appear to -- we don't believe that there would be any evidence that would show that this particular glass panel or pane was installed after the effective date of that. Therefore, Your Honor, we don't think that either one of these two particular statutes would deal with the factual situation presented here.

We would note also, Your Honor, that there is a provision of the federal act which in effect preempts State standards. I think we cited that in our letter brief. It in effect states that any standard in effect, promulgated by a state or any political

subdivision thereof that deals with the same risks will be preempts by the federal law, unless there was a specific application made to the Commission and was found to be a different kind of standard or a stricter standard, which I don't think is applicable here. So, therefore, the Georgia act wasn't even in effect for all practice purposes at the time of the incident issue of November 8, 1978.

THE COURT: Mr. Breault?

MR. BREAULT: Your Honor, if I may respond briefly, it's not my intention to argue our whole case so far as the law is concerned at this time as Mr. Marchetti has. Our contentions are three, basically, Your Honor. Number one is Mr. Marchetti wants this Court to adopt a rule to exclude and to prevent counsel from speaking to the issues to

the jury. If he wants the Court to adopt such a rule, which is in derogation of our common law right to make an opening statement and tell the jury the facts and the issues in the case, then let Mr. Marchetti cite some authority to the Court. They have cited no authority whatsoever to the Court to authorize the Court to gag me as to speaking about the facts and the issues. That's my first point, no authority.

The second point is that whether or not these laws apply is definitely a powerful issues, a central issue in this case. We have alleged negligence per se, negligence as a matter of law, negligence where they violated the state law and the federal law in having the wrong kind of glass in that door out there. This is an issue made in the pleadings. We alleged it in

our pleadings and they denied it in the pleadings. This is an issue in the case, and we have a clear right under the law to tell the jury what the issues are in this case; and if that's an issue, I have a right to talk about it to the jury.

I quote to the Court as my third point, Davis and Schulman's practice and procedure, Georgia Practice and Procedure, under Section 14-1, "Preliminary Statement," and I will read briefly. "When all the steps preparatory to the trial have been taken, the jury empanelled, sworn and ready to try a case, it is desirable for an intelligent understanding of the nature of the case that the jury form a bird's eye view of the facts and issues in the given litigation. In a large number of cases lawyers do not 'open up the case,'

as it is called, to the jury before the introduction of evidence. When this is done, however, all the attorney is allowed to do is to state the issue arising in the pleadings and to state what facts his side expects to prove." If it's an issue, they have no authority to stop me from telling the jury what the issues are and we think we have a right to do it, Your Honor. And I don't want to go into a long song and dance about these statutes at this time. But we clearly contend that these statutes do apply and are germane to this case.

MR. MARCHETTI: Your Honor, what we're dealing with is the applicable law. What Mr. Breault cited deals with facts or issues. We expect that his opening statement may deal with facts he expects the evidence to show. What we're dealing with is an issue of

law. The procedure is one that's been recognized for a long period of time. It's called and we denominate it as a motion in limine. That is a motion to limit certain comments as they may affect the applicability of the law here. We make such motions to the Court with respect to these issues. We are not try into deprive anyone of the right to discuss matters, issues, or factual issues. We're addressing the Court on a matter of law. It's the province of the Court to decide whether or not certain laws are applicable. For counsel to make --

THE COURT: Just one minute, Mr. Marchetti.

Would you go get a jury for us at this time.

THE BAILIFF: Yes, ma'am.

THE COURT: Continue on.

MR. MARCHETTI: For the Court to allow a discussion of the law by counsel which may be found by the Court to be inapplicable, would be irreparable harm to the defendant. We're dealing with an issue of law here, and that's all we're asking the Court to decide. We're not asking that the Court pre-decide the case. And the motion or the procedure is one of motion in limine.

THE COURT: I'm going to deny the motion in limine. If there is any grounds for a directed verdict, I will deal with that at the proper time. But I think these standards are an issue in the case, and I will not allow him to argue the law in the opening statement, but I think he does have a right to set forth the issues.

ENUMERATION OF ERRORS TO GEORGIA COURT OF APPEALS AND GEORGIA SUPREME COURT, NUMBERS 1 THROUGH 4

1. The court below erred in denying and in failing to sustain Appellant's motion for judgment notwithstanding the verdict in that the verdict rendered should have been set aside and a judgment entered for Defendant on the grounds specified in said motion for judgment entered for Defendant on the grounds specified in said motion for judgment notwithstanding the verdict [R. 137, 138, 153].

2. The court below erred in denying and in failing to sustain Appellant's motion for new trial in that a new trial should have been granted to Appellant on all grounds specified in said motion for new trial as amended [R. 137-155, 158-162].

3. The court below erred in entering judgment for the Appellee on a verdict in the full amount sued for, such verdict and judgment being contrary to the evidence looking at the evidence in the light most favorable to Appellee, in that:

(a) there is no evidence that any act or omission on the part of Defendant proximately caused the accident and resulting injuries;

(b) there is no evidence that Defendant could have reasonably foreseen or anticipated the injury;

(c) the jury did not apply the doctrine of comparative negligence as charged by the court when under the evidence Appellee was negligent, or so inattentive as to have not exercised ordinary care for her own safety, which error is made manifest by the excessive

and exorbitant verdict, justifying the inference of bias, prejudice and gross mistake on the part of the jury.

4. The court below committed substantial error, harmful as a matter of law, in refusing to grant Defendant's motion in limine with respect to, and over objection of Defendant, in charging Ga. Code §§92A-2001(a), 92A-2001(b), 92A-2001(c) and 92A-2004 (Ga. Laws 1970, pp. 151, 152) [T. 387(e)-387(g), 387(y)-387(bb), 387(ff), 387(gg)] in that:

(a) Federal law pre-empted the state law with regard to safety glazing material and in particular the risk of injury arising out of the use of such material.

(b) Said law is null, void and unconstitutional in that said statute does not set forth a reasonable guideline or standard for compliance

therewith, particularly with reference to "replacement of similar glass already in place," and the application of such unconstitutional statute would deprive defendant of property without due process of law in violation of the Constitution of Georgia, Art. I, Sect. I, Par. I (Ga. Code Ann. §2-101), and constitutes State action in violation of the Fourteenth Amendment to the Constitution of the United States.

(c) Said laws were not applicable under the evidence in the case and the court below committed error in applying that law in this case.

(d) The court erred in its charge on negligence per se in connection with the charge of Ga. Code §92A-2004 in that as a part of said charge, the court did not charge the jury that the jury must go further and determine whether or not,

if the jury found that Appellant violated the statute, that such violation was the proximate cause or a contributing proximate cause of any injury or damage suffered by Appellee.

(e) The court failed to instruct the jury as to the meaning or effect of the word "knowingly" contained in Ga. Code §92A-2004, a substantial and vital issue in the case.

(f) The court erred in refusing to grant a mistrial on motion of Appellant [T. 386(xlv)-386(xlvi)].

Motion to Dismiss or Affirm

81-1505

Office - Supreme Court, U.S.
FILED
MAR 10 1982
ALEXANDER L. STEVAS,
CLERK

CASE NO. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1981

CAMELLIA CORPORATION,
Appellant,
vs.
DEBORAH CORNELL,
Respondent

ON APPEAL FROM THE SUPREME COURT OF GEORGIA AND/OR PETITION FOR WRIT OF CERTIORARI

BRIEF IN OPPOSITION

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STATEMENT OF FACTS

On November 8, 1978, Deborah Cornell, Respondent, was 17 years old. She had dropped out of high school, married and moved into an apartment owned by the Appellant in Columbus, Georgia.

The Apartment had a back door with glass in it. The upper part had three panes of glass and the bottom part was wood. The door had a spring attached to it that sometimes closed the door and sometimes did not.

Debbie went out the back door one night to shake out a mop. She left it outside. She turned to go back in, and her arm went through a pane of glass in the door.

The glass was double-strength window glass that when broken causes cutting and piercing injuries to human bodies.

Debbie sustained deep lacerations

to her arm that cut muscle, tendons and her ulnar nerve. It took 175 stitches to sew her arm up. She underwent hospitalization and surgery. She has a permanent "claw" injury to her right hand because of nerve and tendon damage. Her hand looks like a claw.

She cannot type, bowl, start a car or pick up a baby with her right arm. She has trouble turning a T.V. dial and dialing a telephone. She has a serious, disfiguring, permanent disability to her right arm and hand.

Respondent proved at the trial in the State Court of Muscogee County, Georgia that Appellant had not used safety glass in the door. Appellant had replaced the pane of glass in the door in 1977. In 1977 at least four kinds of safety glass were available in Columbus, Georgia including tempered glass, laminated glass, wire glass and plexiglass.

Georgia had enacted a law in 1970 prohibiting the installation of non-safety glass in entrance doors. (Georgia Acts 1970, pp. 151, 152) Respondent proved at the trial that if there had been safety glass in the door, Debbie Cornell would never have been hurt.

The trial court charged the Georgia law on safety glass to the jury on the issue of negligence per se.

The jury returned a verdict for $250,000.00 for the Respondent. The Court of Appeals of Georgia reversed, holding that the Georgia law on safety glass did not apply to the particular door at issue because the door was not all glass.

The Supreme Court of Georgia re-instated the jury verdict holding that the safety glass law of Georgia did apply to the door in question, and that the trial court's charge on negligence per

se was correct. It was clear to the Supreme Court of Georgia that safety glazing material was required under Georgia law when installing glass panels in entrance doors, whether all glass or part glass.

Thus, the Supreme Court of Georgia has held that a Georgia plaintiff in a Georgia court against a Georgia defendant has the right to have a charge to the Georgia jury on the Georgia law concerning safety glass in doors in structures located in the state of Georgia.

VAGUENESS

Appellant's first question presented is vagueness as a violation of due process under the Fourteenth Amendment. Appellant says the Georgia law is vague. Respondent says the Georgia law is not vague, of course.

Appellant's main argument seems to be that because the Georgia Court of Appeals reversed the jury verdict, this is proof that the statute is vague. Thus their argument seems to be that if there is any disagreement among state judges about the applicability of a statute to a particular set of facts, then ipso facto the statute is unconstitutuionally vague under the Fourteenth Amendment to the United States Constitution.

By analogy, should the several federal courts of appeal disagree on the intendment of a particular statute, then the statute is unconstitutionally vague because the several jurists had disagreed about it. Surely, jurists may disagree as to whether a particular statute applies to a particular fact situation without the statute itself being unconstitutionally vague. There is always room for different opinions

when applying principles set out in statutes to particular facts in the material world. This does not mean the statute is vague or defective.

The Georgia law on safety glass is clear and specific. The Supreme Court of Georgia has held it applies to the facts of this case.

"All the Due Process Clause requires is that the law give sufficient warning that men may conduct themselves so as to avoid that which is forbidden." Rose v. Locke 423 U. S. 48, 49, 50 (1975).

Respondent produced evidence at the trial that people in the glass business informed their customers that safety glass was required in doors in Georgia. Anybody who took the trouble to inquire knew that it was illegal to put window glass in doors. Appellant should have known that it was illegal to put window glass in doors in Georgia. The Georgia

law was passed in 1970. The glass was replaced in 1977.

Appellant maintains that it did not know about the Georgia statute in question. All are presumed to know the law. Ignorance of the law excuses no one. Were it otherwise, every party would say it did not know the law, and no law could be enforced.

In one breath, Appellant says it did not know about the law, and in the next breath says that the law was vague and unconstitutional and unfair to it because it did not know what the law meant. Query: How can Appellant have been misled or lulled or damaged by vague words in a law it did not know about?

No matter how the law was drawn, it would not have made any difference. Appellant says it never read it or knew about it. Appellant has never contended it relied on the phraseology ot the statute.

By analogy to a fraud case, if false

words are uttered by defendant, but plaintiff does not rely on them and plaintiff is not damaged, plaintiff has no case.

Here, Appellant did not read the statute and did not rely on the statute. Appellant cannot now say it has been damaged by vague words it never read, much less that its vaunted constitutional rights have been infringed.

The writer could go on here and produce a long detailed argument as to why the statute is not vague, but in deference to Rule 22.2 that this brief be as short as possible, the writer will urge only that the reader study the statutes in question and draw his own conclusion.

PRE-EMPTION

Appellant's second question is pre-emption. Appellant says that because

the federal government has passed certain laws and regulations concerning the manufacture, sale and distribution of glass that the Georgia law concerning installation of glass in Georgia buildings has been pre-empted.

The Georgia Supreme Court did not hold that the federal Consumer Product Safety Act was unconstitutional or unenforceable. It merely said that the federal law did not pre-empt state law on the subject.

The federal enactments concerning glass deal with interstate matters. They speak to interstate manufacture, sale, distribution and importation. Under the Commerce Clause, it could not do otherwise. The federal enactments did not take effect until July, 1977. The Georgia statute was enacted in 1970, seven years prior.

As it applies to the facts of this

case, Georgia law speaks to required installation of glass in particular locations in structures. Nothing in the federal law and regulations speaks to what local apartment owners may or may not do with glass in doors and windows. This is a matter left to local authority, which is what the Georgia law purported to regulate. How the glass is used in Georgia is an appropriate function for Georgia law. Georgia had a right to legislate local use of glass in hazardous locations, and Georgia did so.

The state law as to prohibiting installation of non-safety glass in doors is not an obstacle to the accomplishment of the Consumer Product Safety Act. The state law in fact supplements the federal law. See Kaiser Aluminum and Chemical Corporation vs. United States Consumer Product Safety Commission 574 F2d 178 (1978).

Congress has not ordained that the federal law pre-empts. In fact, 15 U.S.C.A. §2074(a) states:

> "Compliance with consumer product safety rules or other rules or orders under this chapter shall not relieve any person from liability at common law or under State statutory law to any other person." (Emphasis supplied)

Further, 15 U.S.C.A. §2078 mandates cooperation with the states. If Congress intended federal law to pre-empt the field, why would this provision exist?

Appellant's pre-emption argument is a strategy to attempt to deprive the Respondent of the protection of a state safety law. Yet, Appellant also takes the position that Appellant Camellia Corporation has no duties under the federal law. That is, federal law on glass does not cover a local apartment owner.

If Appellant's argument were successful, there would be no regulation of local use of glass, because the state statute would be pre-empted, and the federal law does not concern itself with local use of glass.

The result Appellant hopes for in this case is that neither state nor federal law be given in charge to the jury. Appellant would have the United States Supreme Court hold that Respondent should have the protection of neither statute even though both were promulgated to protect her and those in her class from the dangers of glass.

The Georgia courts have done nothing in derogation of federal law. All that the Supreme Court of Georgia did is uphold a Georgia law. The Georgia law is a good law that is intended to protect people from being crippled on broken glass in hazardous locations. Nothing in the feder-

al law talks about hazardous locations. The Georgia law is not pre-empted by federal enactments.

NO SUBSTANTIAL FEDERAL QUESTION

There is no substantial federal question involved in this case.

Rule 17 of the Rules of the Supreme Court of the United States lays out the guidelines for review on certiorari.

Rule 17.1(a) applies to federal courts of appeal decisions and is not applicable here.

Rule 17.1(b) states:

> "When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals."

Appellant has cited no opinion of

a state court of last resort or of a federal court of appeals that is in conflict with the decision of the Supreme Court of Georgia at issue here. Thus review on certiorari under this provision cannot be justified.

Rule 17.1(c) states:

> "When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

No federal question has been decided by the Supreme Court of Georgia in conflict with any decision of the Supreme Court of the United States.

Further, there has been no question of federal law decided by the Supreme

Court of Georgia. Georgia simply allowed a Georgia law to be charged in a state personal injury case. It has nothing to do with federal law.

CONCLUSION

There is absolutely no important federal issue to be decided in this case. A Georgia law and how it applies to a Georgia plaintiff injured on Georgia real estate is the issue. It has been decided in the appropriate forum - the Supreme Court of Georgia.

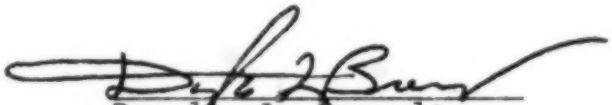
No federal statute has been invalidated. No constitutional principle has been violated. No federal case has been contradicted or not followed. Appellant's vagueness and pre-emption arguments are feeble attempts to bootstrap itself into federal jurisdiction.

The rights of injured people and

the applicability of state law are state matters. If such basic matters are federal issues, then there is nothing which is not a federal issue.

A unanimous jury verdict of twelve Georgia citizens awarded Debbie Cornell a sum of money to compensate her for a crippled arm. The Supreme Court of Georgia has allowed the verdict to stand. There is no reason for the Supreme Court of the United States to concern itself in this dispute.

Respondent respectfully submits that certiorari should be denied and the appeal dismissed.



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CERTIFICATE OF SERVICE ON APPELLANT

I do hereby certify that I am a member of the Bar of the Supreme Court of the United States and that I have served the foregoing Brief in Opposition upon Camellia Corporation, Appellant, by mailing copies of the same properly addressed, postage prepaid, to Mr. William G. Scrantom, Jr., Page, Scrantom, Harris, McGlamry and Chapman, P.C., attorneys of record for Appellant Camellia Corporation.

This 5th day of March, 1982.



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CERTIFICATE OF SERVICE ON ATTORNEY GENERAL OF THE STATE OF GEORGIA

I do hereby certify that I am a member of the Bar of the Supreme Court of the United States and that I have served the foregoing Brief in Opposition upon the Attorney General of the State of Georgia by mailing a copy thereof to the Honorable Michael Bowers, Attorney General, State of Georgia, 132 State Judicial Building, Atlanta, Georgia, 30334, in a properly addressed envelope, with first-class postage prepaid.

This 5th day of March, 1982.



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